

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Tax and Revenue

NOTICE OF FINAL RULEMAKING

The Office of Tax and Revenue (OTR), pursuant to the authority set forth in the D.C. Official Code § 1-204.24c, as amended by Section 155 of the District of Columbia Appropriations Act 2001, approved November 22, 2000 (114 Stat 2476; Pub. L. 106-522) and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of adoption of amendments to Title 9 DCMR (Taxation and Assessments). The final regulations add a new Chapter 11 entitled “Qualified High Technology Company”. Notice of Proposed Regulations were published in the D.C. Register on November 30, 2001. These final rules will be effective upon publication in the *D.C. Register*.

The final regulations modify the income and franchise tax, sales and use tax, and personal property tax regulations in accordance with the New E-Conomy Transformation Act of 2000 (Act), effective April 3, 2001, (D.C. Law 13-256, D.C. Official Code § 47-1817.1 *et seq.*). Specifically, the final regulations clarify sections of the Act that provide certain credits, exemptions and other benefits for a Qualified High Technology Company (QHTC). The Act includes the following: an explanation of the qualification requirements for QHTCs; income tax filing requirements for QHTCs; tax credits for QHTCs, for employment relocation costs, for wages paid to qualified employees, and for training costs for, and wages paid to recipients of, Temporary Assistance to Needy Families and to persons released from incarceration; a partial exemption from the personal property tax for QHTCs; an exemption from sales and use taxes for sales to, and by, QHTCs of certain property; a reduction of the income tax for QHTCs to (six percent) 6%; an exemption for QHTCs located in high-technology zones from income tax; an allowance for QHTCs to deduct, as an expense for income tax purposes, the lesser of forty thousand dollars (\$40,000) or the cost of property described in section 179 of the Internal Revenue Code of 1986, as amended, including deductions on tenant-made leasehold improvements by a QHTC; and capital gains exclusions and rollovers for certain capital gains.

OTR received seven sets of comments regarding the Proposed Regulations. Most of the comments related to a provision included in the Proposed Regulations to ensure that 51% of the gross revenue of the QHTC was sourced in the operations of the QHTC located in the District of Columbia. The comments, including a comment from a member of the Council of the District of Columbia, stated that this interpretation was not intended in the authorizing legislation. The 51% D.C.-sourced rule has been removed from the Final Regulations. Several other clarifying changes were made in response to comments received.

The following new Chapter 11, **QUALIFIED HIGH TECHNOLOGY COMPANY**, is added to Title 9 DCMR:

**1100 (Reserved)**

**1101 CERTIFICATION BY A QUALIFIED HIGH TECHNOLOGY COMPANY (QHTC)**

**1101.1** To claim a credit or other benefit, a QHTC shall attach to its applicable tax return or claim for refund an original affidavit certifying in good faith that it is a QHTC.

1101.2 The affidavit must be on the form prescribed by the Office of Tax and Revenue.

1101.3 A business which certifies that it is a QHTC shall be subject to audit to the same extent as any other taxpayer in determining District tax liability, applicable credits, exemptions and to verify that it is or was a QHTC.

**1102 TAX CREDIT TO QHTCs: EMPLOYMENT RELOCATION COSTS**

1102.1 A QHTC shall be allowed a credit against the tax imposed by D.C. Official Code § 47-1817.6 for each dollar reimbursed to or paid on behalf of each qualified employee for relocation costs. The credit shall not exceed:

- (a) \$5,000.00 for each employee who relocates his or her employment to the District from a location outside the District but does not relocate his or her principal residence into the District. The annual credit shall not exceed \$250,000.00; or
- (b) \$7,500.00 for each employee who relocates his or her employment to the District from a location outside the District and also relocates his or her principal residence into the District. The annual credit shall not exceed \$1,000,000.00.
- (c) For purposes of this subsection, the principal residence shall be determined as of the last day of the first six months of employment in the District by a QHTC.
- (d) This \$5000 (or \$7500) credit can be allocated over 2 years if the relocation costs are incurred in 2 separate tax years.

1102.2 The tax credit for employment relocation costs shall not be allowed:

- (a) Until the QHTC relocates at least 2 qualified employees from employment outside the District to inside the District;
- (b) Until the QHTC employs the qualified employee for at least 6 months in the District in an activity described in D.C. Official Code § 47-1817.1(5)(A)(iii);
- (c) If the qualified employee works less than 35 hours per week;
- (d) If the qualified employee is a Key Employee; or

(e) If the QHTC claims a deduction for the relocation costs.

1102.3 If the amount of the credit allowable under this section exceeds the tax otherwise due from a QHTC, the unused amount of the credit shall not be carried forward after the tenth year following the first year the taxpayer files a return claiming employment relocation costs under section 1102.1.

1102.4 Costs qualify as relocation costs if the following conditions are met:

- (a) The commencement date of the qualified employee's move or financial assistance must be after December 31, 2000;
- (b) The cost is the only relocation cost requested for the qualified employee; and
- (c) Deductible expenses do not exceed the limits set forth in this section.
- (d) The following are examples of the application of §§1102.1 to 1102.4:

(1) Company C, a QHTC, employs 10 people in activities described in D.C. Official Code § 47-1817.1(5)(A)(iii). On January 2, 2001, Company C hires employees X and Y, who are both qualified full time employees, to work at Company C's place of business in the District in an activity described in D.C. Official Code § 47-1817.1(5)(A)(iii). Both employee X and employee Y previously were employed outside the District. Employees X and Y are not Key Employees within the meaning of § 1199. Both employees, X and Y purchase residences outside the District. Company C reimburses employees X and Y for their moving expense of \$10,000 and the cost of financing the purchase of their new residences of \$15,000. Company C does not plan to take a deduction for the relocation costs paid employees X and Y. After employees X and Y are employed by Company C for 6 months, Company C is entitled to a tax credit of \$10,000.

(2) Assume the same facts as in example 1, except employee X purchased his residence in the District within six months of employment in the District. Company C is entitled to a tax credit of \$7,500 for employee X and \$5,000.00 for employee Y.

## **1103 TAX CREDITS TO QHTCs: WAGES PAID TO QUALIFIED EMPLOYEES.**

1103.1 A QHTC shall be allowed a credit against the tax imposed by D.C. Official Code § 47 -1817.6 equal to ten percent (10%) of the wages paid during the first 24 calendar months to a qualified employee who is employed in the District by the QHTC in any of the activities defined in D.C. Official Code § 47-1817.1(5)(A)(iii) and hired after December 31, 2000.

- 1103.2 The credit shall not exceed, for each qualified employee, five thousand dollars (\$5,000) in a taxable year.
- 1103.3 The credit shall not be allowed if:
- (a) The employee is a key employee;
  - (b) The QHTC accords the qualified employee lesser benefits or rights than it accords other employees in similar jobs; or
  - (c) The qualified employee is employed as the result of:
    - (1) The displacement of another employee;
    - (2) A strike or lockout;
    - (3) A layoff in which other employees are awaiting recall; or
    - (4) A reduction of the regular wages, benefits, or rights of others in similar jobs.
- 1103.4 If the amount of the credit allowable under this section exceeds the tax otherwise due from a QHTC, the unused amount of the credit shall not be carried forward after the tenth year following the first year the taxpayer files a return claiming QHTC status.
- 1103.5 The following are examples of the application of §§ 1103.1 to 1103.4:
- (a) On January 1, 2001, Company D, a QHTC, hires 10 employees at an annual salary of \$40,000 each. Since the workers perform the activities described in D.C. Official Code § 47 -1817.1(5)(A)(iii); they are classified as qualified employees. None of the qualified employees are affected by the restrictions of § 1103.3. The annual payroll each year for the 10 qualified employees is \$400,000. For tax years 2001 and 2002, Company D is entitled to a tax credit equal to 10% of the annual salaries of \$400,000 received by the 10 qualified employees, or \$40,000.
  - (b) Assume the same facts as in example 1, except the annual payroll for each year is \$600,000. For tax years 2001 and 2002, Company D is entitled to a tax credit of only \$5,000.00 for each qualified worker, or \$50,000, since the limitation of § 1103.2 would apply.
  - (c) Assume the same facts as in example 1, except 5 of the qualified employees are entry level and are paid \$30,000 each and 5 of the qualified employees are highly skilled and are paid \$70,000 each. For tax years 2001 and 2002, the limitation of § 1103.1 applies to the 5-entry level qualified employees and the limitation of § 1103.2 applies to the highly skilled qualified employees.

Therefore, Company D is entitled to a tax credit of \$40,000, calculated as follows: (1) the total annual wages paid to the entry level qualified employees is \$150,000 of which 10%, or \$15,000, is available for the credit, (2) the total annual wages paid to the highly skilled qualified employees is \$350,000 and since the credit for each of the five highly skilled qualified employee exceeds \$5,000, only \$25,000 is available for the credit, (3) \$15,000 plus \$25,000 totals \$40,000.

**1104 TAX CREDITS TO QHTCs: RETRAINING COSTS FOR QUALIFIED DISADVANTAGED EMPLOYEES.**

- 1104.1 For taxable years beginning after December 31, 2000, a QHTC shall be allowed a credit against taxes imposed by D.C. Official Code § 47-1817.6 for expenditures paid or incurred by a QHTC during the taxable year for retraining of a qualified disadvantaged employee.
- 1104.2 The following expenditures for retraining qualified disadvantaged employees paid by a QHTC are eligible for the tax credit:
- (a) Tuition, costs, or fees for credit or noncredit courses leading to academic degrees or certification of professional, technical, or administrative skills taken at District-based accredited colleges or universities;
  - (b) The cost for formal enrollment in training programs offered by nonprofit training providers (including community or faith-based organizations certified for the provision of training, or job-readiness preparation at skill levels suitable for immediate performance of entry-level jobs) that are pre-qualified for participation under this section by the Department of Employment Services and are in demand among technology companies in general, and among information and telecommunications companies in particular;
  - (c) Eligible training programs, other than those at District-based accredited colleges or universities, that are pre-qualified for participation under this section by the Department of Employment Services; and
  - (d) Worker retraining programs undertaken through an apprenticeship agreement approved by the District of Columbia Apprenticeship Council.
- 1104.3 The credit claimed under this section shall be limited to twenty thousand dollars (\$20,000) for each qualified disadvantaged employee during the first 18 months of employment.
- 1104.4 If the amount of the credit allowable under this section exceeds the tax otherwise due from a QHTC, the unused amount of the credit shall not be carried forward after the tenth year following the first year the taxpayer files a return claiming QHTC status.

In the alternative, the QHTC can elect to take a refundable credit in an amount up to fifty percent (50%) of the unused credit with no carryover of the unused credit to subsequent years. A QHTC, that is not a corporation, may file a claim for refund.

1104.5 The retraining costs shall be prorated for the number of months of the training program.

1104.6 The following are examples of the application of §§1104.1 through 1104.5:

- (a) Company E, a QHTC, hires 10 qualified employees to work in activities described in D.C. Official Code § 47 -1817.1(5)(A)(iii). Five of Company E's employees are qualified disadvantaged employees within the meaning of § 1199. None of the qualified disadvantaged employees are affected by the restrictions of § 1199. On January 1, 2001, Company E enters into a 24-month program that was pre-qualified by the Department of Employment Services to retrain five qualified disadvantaged employees. The cost for the 24-month program is \$20,000 for each qualified disadvantaged employee.

In tax year 2001, Company E is entitled to a tax credit of \$50,000 and a tax credit of \$25,000 in tax year 2002, computed as follows: Company E's retraining costs were \$833 per employee per month (\$833 per month x 5 employees x 12 months = \$50,000 and \$833 per month x 5 employees x 6 months = \$25,000).

The credit limitation of § 1104.3 is \$1,111 per employee per month in retraining costs, for a period not to exceed eighteen months, paid by a QHTC to retrain each qualified disadvantaged employee.

- (b) Assume the same facts as in example 1, except the retraining cost for the 24-month program is \$60,000 per qualified disadvantage employee. Company E is entitled to a tax credit in tax year 2001 of \$66,667 and a tax credit of \$33,333 in tax year 2002, even though Company E's retraining costs are \$2,500 per employee per month. § 1104.3 limits the credit to \$1,111 per employee per month in retraining costs, for a period not to exceed eighteen months (\$1,111 x 5 x 12 = \$66,667 and \$1,111 x 5 x 6 = \$33,333).

**1105      TAX CREDITS TO QHTCs: WAGES PAID TO QUALIFIED DISADVANTAGED EMPLOYEES.**

- 1105.1      A QHTC shall be allowed a credit against the tax imposed by D.C. Official Code § 47-1817.6 equal to fifty percent (50%) of the wages paid to a qualified disadvantaged employee, as defined in § 1199, during the first 24 calendar months of employment.
- 1105.2      The credit claimed under this section shall be limited to fifteen thousand dollars (\$15,000) in a taxable year for each qualified disadvantaged employee.
- 1105.3      The credit shall not be allowed if:
- (a)      The employee is a key employee;
  - (b)      The QHTC accords the qualified employee lesser benefits or rights than it accords other employees in similar jobs; or
  - (c)      The qualified employee is employed as the result of:
    - (1)      The displacement of another employee;
    - (2)      A strike or lockout;
    - (3)      A layoff in which other employees are awaiting recall; or
    - (4)      A reduction of the regular wages, benefits, or rights of other employees in similar jobs.
- 1105.4      If the amount of the credit allowable under this section exceeds the tax otherwise due from a QHTC, the unused amount of the credit shall not be carried forward after the tenth year following the first year the taxpayer files a return claiming QHTC status.

**1106      TAX ON QUALIFIED HIGH TECHNOLOGY COMPANIES.**

- 1106.1      Notwithstanding any other provision of this chapter, and in lieu of the tax on taxable income imposed by D.C. Official Code § 47-1807.2, subject to the credits applicable thereto, a tax on taxable income at a rate of six percent (6%) shall be imposed upon QHTCs that are corporations.
- 1106.2      A QHTC within a high technology development zone shall not be subject to the franchise tax imposed by Chapter 18 of Title 47 of the D.C. Official Code for five (5) years after the date that the QHTC commences business in the high technology development zone.
- 1106.3      The QHTC will be deemed to commence business on the first day of the taxable year for which a tax return is filed claiming benefits as a QHTC.

1106.4 The transfer of ownership of a QHTC shall not affect the provisions of this section.

**1107 ELECTION TO EXPENSE CERTAIN DEPRECIABLE BUSINESS ASSETS.**

1107.1 In the case of a QHTC there shall be allowed a deduction from gross income in computing net income equal to:

- (a) An amount that is the lesser of forty thousand dollars (\$40,000) or the actual cost of property for tangible personal property described in Internal Revenue Code of 1986, as amended (IRC) § 179(d)(1) and including leasehold improvements;
- (b) If the QHTC is a tenant, the cost of any real property and leasehold improvements regardless of whether or not such improvements become an integral part of the realty; such improvements shall include improvements described in 9 DCMR §§ 702.3, 702.4, and 702.5; or
- (c) The amount claimed on the QHTC's corresponding federal income tax return should be considered as part of the amount allowed under IRC § 162.1(a).

1107.2 The following are examples of the application of §1107.1:

- (a) On January 1, 2001, Company F, a QHTC, purchases computers at a cost of \$100,000. The computers are used by Company F to conduct qualified high technology activities. In filing their Federal income tax return, Company F claims the maximum deduction of \$20,000 of the cost of the computers. In filing their District franchise tax return, Company F is allowed up to an additional \$20,000 of the cost of the computers, for a maximum deduction for D.C. tax purposes of \$40,000.
- (b) Same facts as in Example 1, except Company F does not claim the maximum deduction for Federal tax purposes but claims \$10,000.00. In filing their District franchise tax return, Company F is allowed to deduct up to an additional \$30,000 of the cost of the computers, for a maximum deduction for D.C. tax purposes of \$40,000.

**1108 UNINCORPORATED BUSINESS FRANCHISE TAX EXEMPTION**

1108.1 A QHTC that is not a corporation is exempt from the unincorporated business franchise tax. A QHTC that is not a corporation may claim a partial refund of its retraining costs as provided by D.C. Official Code § 47-1817 by timely filing a Claim for Refund-QHTC Retraining Cost, Form FP-332. A QHTC that is not a corporation may claim the sales and personal property tax benefits provided by the Act as well as the real property benefits of Title III of the Act.



1108.2 The following are examples of the application of §1108.1:

- (a) Company F, a Certified QHTC, is a limited liability company that has elected for Federal tax purposes to be taxed as a partnership. D.C. Official Code § 47-1808.1(5) provides that Company F is exempt from the unincorporated business franchise tax. The partnership QHTC will file a District information income tax return, Form D-65, and the partnership income will flow through to the partners. The partners who are residents of the District will report their prorated partnership income on their District individual income tax returns, Form D-40. The partners who are not residents of the District will report their prorated partnership income on their individual income tax returns in the state in which they are a resident.
- (b) Company F, a Certified QHTC, is a limited liability company that has elected for Federal tax purposes to be taxed as a corporation. The statute provides that Company F is entitled to reduce its corporate franchise tax liability by the credits provided by Title II and IV of the Act, - the credit for reduction in the corporation tax rate, the relocation credit, the wage credit and the retraining credit. Also, Company F can claim the sales and personal property tax benefits provided by the Act as well as the real property benefits of Title III of the Act.

## **1109 EXEMPTION FROM TAX OF CAPITAL GAINS ON QUALIFIED ASSETS**

1109.1 Qualified capital gain from the sale or exchange of QHTC assets held for more than five (5) years are excluded from the computation of District gross income.

1109.2 The amount of qualified capital gain shall not include gain which:

- (a) Is attributable to real property or an intangible asset which is not an integral part of a QHTC; and
- (b) Occurs before January 1, 2001 or after December 31, 2007.

## **1110 ROLLOVER OF CAPITAL GAIN FROM QUALIFIED STOCK TO OTHER QUALIFIED STOCK.**

1110.1 In the event of a sale of qualified stock held by a taxpayer other than a corporation for more than 6 months and with respect to which the taxpayer elects the application of this section, gain from the sale shall be recognized to the extent the amount realized on the sale exceeds the cost of qualified stock purchased by the taxpayer during the sixty (60) day period beginning on the date of the sale, reduced by the amount of the gain, not to exceed such cost, previously deferred under this section.

1110.2 A taxpayer shall be treated as having purchased qualified stock if, but for the purposes of §§ 1110.3 and 1110.4, the adjusted basis of the property in the hands of the taxpayer would be its cost.

- 1110.3 If gain from a sale is not recognized under § 1110.1, the unrecognized gain shall reduce the basis of qualified stock, in the order acquired, which is purchased by the taxpayer during the sixty (60) day period described in § 1110.1.
- 1110.4 For purposes of determining whether the non-recognition of gain under § 1110.1 applies to qualified stock which is sold:
- (a) The taxpayer's holding period for the stock and the stock referred to in this section shall be determined without regards to IRC § 1223; and
  - (b) Only the first 6 months of the taxpayer's holding period for the stock referred to in this section shall be taken into account for purposes of applying IRC § 1202(c)(2).
- 1110.5 This section shall not apply to any gain that is treated as ordinary income under the IRC.
- 1110.6 The following is an example of the application of §§1110.1 through 1110.5:

G, an individual taxpayer, purchased qualified stock in QHTC X on January 1, 2001 for \$7,000. On July 1, 2001, G sells all her stock in Company X for \$10,000. On August 1, 2001, G purchases qualified stock in QHTC Y for \$5,000. The stock of Company X and Company Y is qualified small business stock as defined by IRC § 1202. G elects to apply this section, and the effect is computed in the following manner:

1. 01/01/01 Purchase qualified stock in Company X	Adjusted Basis	\$7,000.00
2. 07/01/01 Sold Company X stock	Amount Realized	<u>\$10,000.00</u>
3. Amount of Gain (line 1 minus line 2)		\$3,000.00
4. Amount realized on sale (line 2)		\$10,000.00
5. Less qualified stock in Company Y purchased within 60 days of sale		(\$5,000.00)
6. Less Amount of Gain (line 3)		<u>(\$3,000.00)</u>
7. Amount of Gain recognized		\$2,000.00
8. Amount of Gain not recognized (line 3 minus line 7)		\$1,000.00
9. Basis in Company Y's stock (line 5 minus line 8)		\$4,000.00

## **1111 SALES AND USE TAX EXEMPTION FOR QHTCs**

- 1111.1 Sales within the District by a QHTC of intangible property or services otherwise

taxable as a retail sale or sale at retail, including the activities listed in D.C. Official Code § 47-1817.1(5)(A)(iii), are exempt from sales tax.

1111.2 Section 1111.1 shall not apply to telecommunication service providers.

1111.3 Sales to a QHTC of computer software or hardware, and visualization and human interface technology equipment, including operating and applications software, computers, terminals, display devices, printers, cable, fiber, storage media, networking hardware, peripherals, and modems when purchased for use in connection with the operation of a QHTC are not subject to sales tax.

## **1112 PERSONAL PROPERTY TAX INCENTIVES FOR QHTCs**

1112.1 Qualified property purchased by a QHTC after December 31, 2000 shall be exempt from personal property tax for 10 years beginning in the year of purchase.

1112.2 If qualified property purchased by a QHTC after December 31, 2000, is being used or available for use in the eleventh year and thereafter, the qualified property shall be reported at 25 percent (25%) of the original cost or exchange value, unless the qualified property is qualified technological equipment, as defined in D.C. Official Code § 47-1523(b), in which case it shall be reported at 10 percent (10%) of the original cost or exchange value.

1112.3 The following is an example of the application of §§1112.1 and 1112.2:

After December 31, 2000, Company F, a certified QHTC, purchased computer equipment that is qualified property. The computer equipment purchased by Company F is exempt from personal property tax for 10 years beginning with the date of purchase.

## **1113-1114 (Reserved)**

## **1115 REAL PROPERTY TAX ABATEMENT FOR CERTAIN COMMERCIAL PROPERTIES**

1115.1 For a real property owner, the real property tax attributable to the increase in the assessed value for (a) and/or (b), below, shall be abated for 5 years if the owner:

(a) Constructs a new eligible building for a QHTC and the initial or temporary certificate of occupancy was received after December 31, 2000; or

(b) Improves or renovates an existing eligible building or a portion of an existing building which is necessary to adapt or to convert for use by a QHTC.

(c) In order to qualify for the abatement under this section, a QHTC must apply to the Real Property Administration of OTR on or before the first day of the real

property tax year (that begins October 1) of the tax year for which the QHTC seeks the abatement.

- 1115.2 For the tenant who is liable for the real property tax, the real property tax attributable to the increase in the assessed value shall be abated for 5 years. The abatement applies where the tenant makes improvements or renovations to an existing eligible building or a portion of an existing eligible building which are necessary to adapt or to convert for use by:
- (a) The tenant who is a QHTC; or
  - (b) A subtenant who is a QHTC.
- 1115.3 The amount of an abatement under this section will appear on the real property tax bill as a credit. If a tenant is liable for real property taxes under a lease, it will be solely the responsibility of the owner/landlord to transfer the benefits under this section to the tenant. There shall be no recourse by the tenant against the District for the failure of the owner/landlord to make the transfer of benefits.
- 1115.4 If a lease for real property for an eligible building that is used by a QHTC is terminated during the 5-year abatement period, the abatement will remain in effect for twelve months or less if the owner or tenant makes a good faith effort to lease the real property to a QHTC.
- 1115.5 The abatement period for the real property shall not exceed 5 years from the first day of the month following the rent commencement date. For purposes of this section, the rent commencement date shall be the earlier of the date an initial certificate of occupancy is issued for, or a person takes possession or renews possession of, the improvement or renovation (made under this section) of any part of the real property.
- 1115.6 On or after the rent commencement date, the abatement shall be the increase in real property tax attributable to the improvements or renovations made under this section as such improvements or renovations are valued by the Deputy Chief Financial Officer as of the rent commencement date.
- 1115.7 The annual income expense statement filed by the owner shall be deemed the real property tax return for purposes of this section. Each year, the person filing the income expense statement shall attach thereto a copy of the Form QHTC-CERT from each tenant. The person filing such statement shall indicate the rent commencement date, as defined in section 1115.5. The person filing such statement shall state thereon the square, suffix, and lot of the real property.
- 1115.8 The abatement will be revoked immediately if the owner or tenant leases the real property to a tenant who is not a QHTC, which causes the building to become no longer an eligible building.

1115.9 The owner shall immediately provide written notice to the Deputy Chief Financial Officer, when the real property becomes ineligible. The owner shall state the square, suffix, and lot on the written notice as well as the date of ineligibility.

1115.10 The Board of Real Property Assessments and Appeals, or the Superior Court of the District of Columbia, shall, when rendering a decision, make allocation to the renovations or improvements made under this section.

## **1116-1198 (Reserved)**

### **1199 DEFINITIONS**

1199.1 As used in this chapter, the following terms and phrases shall have the meaning ascribed:

**Aggregate Sq. Footage** means, for the purpose of § 1115, the net rentable area.

**Applicant** - for real property tax abatement purposes, is the landlord or the tenant, whichever qualifies as making the improvements for a QHTC and is liable for the tax.

**Benefit period** - for real property tax abatement purposes, is the period commencing on the first day of the month immediately following the rent commencement date and terminating no later than 60 months thereafter.

**Billing assessed value** - for real property tax abatement purposes, means the lesser of the taxable transitional assessed value or the taxable actual assessed value of the eligible building and the land on which the eligible building is located for the fiscal year in which the benefit period commences.

**Eligible building** - for real property tax abatement purposes, means a non-residential or mixed-use building in which:

- (a) At least 50% of its tenants are QHTC; or
- (b) At least 50% of its aggregate square footage is leased to a QHTC using the premises as an office or retail space.

**Eligible premises** - for real property tax abatement purposes, means premises located in an eligible building which are occupied and used as an office (including ancillary uses) or retail space by a QHTC under a lease.

**Gross revenue** - has the same meaning as “Gross Income” as defined in IRC § 61.

**High Technology Activities** means:

- (a) Internet-related services and sales, including website design, maintenance, hosting, or operation; Internet-related training, consulting, advertising, or promotion services; the development, rental, lease, or sale of Internet-related applications, connectivity, or digital content; or products and services that may be considered e-commerce;
- (b) Information and communication technologies, equipment and systems that involve advanced computer software and hardware, data processing, visualization technologies, or human interface technologies, whether deployed on the Internet or other electronic or digital media. Such technologies, whether deployed on the Internet or other electronic or digital media, shall include operating and application software; Internet-related services, including design, strategic planning, deployment, and management services and artificial intelligence; computer modeling and simulation; high-level software languages; neural networks; processor architecture; animation and full-motion video; graphics hardware and software; speech and optical character recognition; high volume information storage and retrieval; data compression; and multiplexing, digital signal processing, and spectrum technologies;
- (c) Advanced materials and processing technologies that involve the development, modification, or improvement of one or more materials or methods to produce devices and structures with improved performance characteristics or special functional attributes, or to activate, speed up, or otherwise alter chemical, biochemical, or medical processes. Such materials and technologies shall include metal alloys; metal matrix and ceramic composites; advanced polymers; thin films; membranes; superconductors; electronic and photonic reduction; pharmaceuticals; and waste processing technologies;
- (d) Engineering, production, biotechnology and defense technologies that involve knowledge-based control systems and architectures; advanced fabrication and design processes, equipment, and tools; or propulsion, navigation, guidance, nautical, aeronautical and astronautical ground and airborne systems, instruments, and equipment. Such technologies shall include: computer-aided design and engineering; computer-integrated manufacturing; robotics and automated equipment integrated circuit fabrication and test equipment; sensors; biosensors; signal and image processing; medical and scientific instruments; precision machining and forming; biological and genetic research equipment; environmental analysis, remediation, control, and prevention equipment; defense command and control equipment; avionics and controls; guided missile and space vehicle propulsion units; military aircraft; space vehicles; and surveillance, tracking, and defense warning systems; or
- (e) Electronic and photonic devices and components for use in producing electronic, optoelectronic, mechanical equipment and products of electronic distribution with interactive media content. Such technologies shall include microprocessors; logic chips; memory chips; lasers; printed circuit board technology; electroluminescent, liquid crystal, plasma, and vacuum fluorescent displays; optical fibers; magnetic and optical

information storage; optical instruments, lenses, filters; simplex and duplex data bases; and solar cells.

**High Technology Development Zones** - the geographic areas described in the priority development areas listed in D.C. Official Code § 2-1219.20. These priority development areas and any other areas designated as “High Technology Development Zones” are outlined in the latest available map drafted by and available in the Mayor’s office. The following are priority development areas as provided by D.C. Official Code § 2-1219.20.

- (a) The Downtown East Area which shall consist of land within the boundary descriptions beginning at the intersection of Pennsylvania Avenue, NW, and New Jersey Avenue, NW, north to Massachusetts Avenue, NW, west on Massachusetts Avenue, NW, to 15<sup>th</sup> Street, NW; south on 15<sup>th</sup> Street, NW, to Pennsylvania Avenue, NW, and east on Pennsylvania Avenue, NW, to New Jersey Avenue NW;
- (b) The Capital City Business and Industrial Area which shall consist of land within the boundary descriptions beginning at the intersection of New York Avenue, NE, and 9<sup>th</sup> Street, NE, to Montana Avenue, NE, north on Montana Avenue, NE, to W Street, NE, west on W Street, NE, to 13<sup>th</sup> Street, NE, northwest on 13<sup>th</sup> Street, NE, to Brentwood Road, NE, southwest on Brentwood Road, NE, to 9<sup>th</sup> Street, NE; and south on 9<sup>th</sup> Street, NE, to New York Avenue, NE;
- (c) The Capital City Market Area which shall consist of land within the boundary descriptions beginning at the intersection of Florida Avenue, NE, and North Capitol Street; southeast on Florida Avenue, NE, to 12<sup>th</sup> Street, NE, south on 12<sup>th</sup> Street, NE, to H Street, N.E., west on H street, NE, to 9<sup>th</sup> Street, NE, and north on 9<sup>th</sup> Street, NE, to Florida Avenue, N.E.;
- (d) Any area designated as Development Zone Areas pursuant to Chapter 14 of Title 5, including, but not limited to, Alabama Avenue, D.C. Village, and Anacostia;
- (e) Any housing opportunity area, development opportunity area, or new or upgraded commercial center designated on the District of Columbia Generalized Land Use Policies Map that is part of the Comprehensive Plan;
- (f) The Transit Impact Area which shall consist of any area located within 1500 feet of a Metrorail station in any of the areas set forth in paragraphs (1) through (12) of this subsection, or within 1500 feet of a Metrorail station at a designated Metrorail Station Development Opportunity Area, as defined in the District Elements of the Comprehensive Plan of the District of Columbia; and
- (g) The Minnesota Avenue area which shall consist of land within the boundary descriptions beginning from East Capitol Street, NE, to Nannie Helen Burroughs Avenue, NE, the Dix Street area which shall consist of land within the boundary descriptions beginning from 58th Street, NE, to Eastern Avenue, NE, the Nannie Helen Burroughs area which shall

consist of land within the boundary descriptions beginning from Eastern Avenue, NE, to 49th Street, NE, the Pennsylvania Avenue area which shall consist of land within the boundary descriptions beginning from Branch Avenue, SE, to Carpenter Street, SE, the Benning Road area which shall consist of land within the boundary descriptions beginning from East Capitol Street, SE, to 44th Street, N.E., from Hanna Place, SE, to Hillside Road, SE, and from 39th Street, SE, to 36th Street, SE, and the Division Avenue area from Eads Street, NE, to Hayes Street, NE.

**Key employee** - a qualified employee who:

- (a) Is a member of the board of directors of the QHTC;
- (b) Directly or indirectly owns a majority of its stock; or
- (c) Is related to a member of the board of directors or a majority stockholder as a spouse or a relative listed in the definition of “dependent” in IRC § 152, without regards to source of income.

**Landlord** - for real property tax abatement purposes, means a person who controls all non-residential portions of an eligible building, including the record owner, the lessee under a ground lease, any mortgagee in possession, or any receiver, and grants the right to occupy and use eligible premises as a tenant; provided, that the landlord shall not include a lessee who, at any time during the lease term, has occupied and used any part of the non-residential portion of the eligible building, other than premises occupied and used by the lessee to provide rental management services to the building.

**Mixed-use building** - for real property tax abatement purposes, means a building used for both residential and non-residential purposes.

**Qualified asset** - qualified stock, qualified partnership interest, or qualified business property. A qualified asset shall include property that was a qualified asset in the hands of a prior holder.

**Qualified business property** – pertains to tangible personal property, real property, and improvements as follows:

- (a) Tangible personal property, as defined in IRC § 179(d)(2) purchased by the taxpayer after December 31, 2000, where the original use of the property commences with the taxpayer, and at least 80% or more of the use of the property was in a QHTC; or
- (b) Real property which is substantially improved by the taxpayer during any 24-month period beginning after December 31, 2000, if:
  - (1) Additions to basis with respect to the property in the hands of the taxpayer exceed the greater of:



- (A) an amount equal to the adjusted basis of the property at the beginning of the 24-month period in the hands of the taxpayer, or
  - (B) five thousand dollars (\$5,000).
- (2) At least fifty one percent (51%) of the cost of the additions to basis represents improvements, which facilitate the conduct of a QHTC on the premises; and
- (3) The improvements are completed before January 1, 2003.

The following are examples of the application of the definition of Qualified Business Property:

- (1) Company B, a QHTC on January 1, 2001, purchased \$10,000 of computer equipment to be used by Company B for developing software. Company B located its base of operation in an abandoned five-story warehouse purchased on January 1, 2001, for \$25,000.00. Over a twenty-four month period, Company B completely renovated the building and repaved the parking area at a cost of \$100,000.00. Company B used two floors for an electronic equipment facility. The balance of the building and parking area are used by Company B to conduct qualifying high technology activities. The computer equipment, building and parking lot are qualified business property. The abandoned warehouse is substantially improved since the cost of the improvements of \$100,000 exceeds the greater of:
- (a) The adjusted basis of the abandoned property which was \$25,000; or
  - (b) \$5,000,
- and more than 51% of the additional improvements facilitate the conduct of a QHTC. Therefore, the requirements of § 1199 are met.
- (2) Assume the same facts as in Example 1, except that Company B leases four floors and 80% of the parking area to a separate QHTC. The building is still substantially improved and is qualified business property since at least 51% of the additional improvements facilitate the conduct of a QHTC. Company B is not required to use the real property to meet the requirements of § 1199, since the Code only requires that the real property be used by a QHTC.
- (3) Assume the same facts as in Example 1, except that Company B leases four floors and 80% of the parking area to a company that is not a QHTC. Since 51% of the substantially improved building does not facilitate the conduct of a QHTC, the improvements do not meet the requirements of § 1199.

**Qualified capital gain** - gain recognized on the sale or exchange of a capital asset as defined in D.C. Official Code § 47-1801.04(10)(A). The term "qualified capital gain" shall not include gain, which is:

- (a) Treated as ordinary income under IRC §§ 1245 or 1250 if IRC § 1250 applied to all depreciation rather than additional depreciation;

(b) Attributable to real property or an intangible asset which is not an integral part of a QHTC's business operations in the District; or

(c) Attributable, directly or indirectly, in whole or in part, to a transaction with a related person.

**Qualified disadvantaged employee** - a District resident who:

(a) Is a recipient of Temporary Assistance for Needy Families (TANF);

(b) Was a recipient of TANF in the period immediately preceding employment;

(c) Was released from incarceration within twenty four (24) months before the date of employment by a QHTC; or

(d) Is an employee hired, or relocated to the District, after December 31, 2000, and for which a QHTC also is eligible to claim the Welfare to Work Tax Credit or the Work Opportunity Tax Credit under the IRC § 51.

(e) The term “qualified disadvantaged employee” shall not mean or include:

(1) An employee who was employed as the result of:

(i) The displacement of another employee;

(ii) A strike or lockout;

(iii) A layoff in which other employees are awaiting recall; or

(iv) A reduction of the regular wages, benefits, or rights of other employees in similar jobs.

**Qualified employee** - a person who is employed in the District by a QHTC in any of the activities described in D.C. Official Code § 47-1817.1(4).

**Qualified High Technology Company** - an individual or entity organized for profit that:

(a) Maintains an office, headquarters, or base of operations in the District of Columbia;

(b) Has 2 or more employees;

(c) Derives at least 51% of its gross revenue from one or more of the activities listed in D.C. Official Code § 47-1817.1(5)(A)(iii);

- (d) Does not receive 51% or more of its gross revenue from operating a retail store or electronic equipment facility, as defined in D.C. Official Code § 47-1817.1(5)(B)(ii), in the District; and
- (e) Is appropriately registered as a business with a District agency that requires registration, such as DCRA and Office of Tax and Revenue, and is current in all District filing requirements and payment obligations.

The following are examples of the application of the definition of a QHTC:

- (1) Company A, a calendar year taxpayer, was incorporated in the District in year one. Company A is organized for profit and maintains its base of operation in the District. Company A has 10 employees. Company A's gross revenue is \$100,000 of which \$60,000 is derived from qualifying high technology activities, as specified in D.C. Official Code § 47-1817.1(5)(A)(iii). Company A does not operate a retail store or electronic equipment facility. Therefore, Company A qualifies as a QHTC within the meaning of § 1199. Company A must attach to its applicable tax returns an original affidavit certifying that it is a QHTC.
- (2) Assume the same facts as in example 1, except that Company A is a local retailer of computers and software whose base of operation is exclusively in the District. Company A's gross revenue is \$1 million. Company A also is engaged in a permitted activity, which generates \$100,000 of gross revenue. Since 51% of Company A's gross revenue is not from a permitted activity, Company A does not meet the § 1199 gross revenue test and is not a QHTC.

**Qualified partnership interest** - a capital or profits interest in a partnership, formed under the laws of the District of Columbia or any state of the United States of America, which is originally issued after December 31, 2000, if:

- (a) The interest is acquired by the taxpayer from the partnership solely in exchange for cash;
- (b) On the date of acquisition, the partnership is a QHTC (or, in the case of a new partnership, the partnership is organized for purposes which qualify it as a QHTC); and
- (c) During 80% or more of the taxpayer's holding period of the interest, the partnership qualifies as a QHTC.

**Qualified Property** – any tangible personal property, as defined in D.C. Official Code § 47-1521(4).

**Qualified stock** - stock in a corporation, formed under the laws of the District of Columbia or any state of the United States of America, which is originally issued after December 31, 2000, if:

- (a) The stock is originally issued to the taxpayer, directly or through an underwriter, solely in exchange for cash;

- (b) On the date of issuance, the corporation is a QHTC (or, in the case of a new corporation, the corporation is being organized for purposes which qualify it as a QHTC); and
- (c) During 80% or more of the taxpayer's holding period for the stock, the corporation qualifies as a QHTC.

**Relocation costs** - amounts paid to, or on behalf of, a qualified employee for reimbursement of:

- (a) Moving expenses as defined in IRC § 217(b)(1); or
- (b) Financial assistance in the purchasing of a residence, or in procuring a one-year lease for a residence.

**Rent Commencement Date** – First day of the first tax year following the tax year in which the Certificate of Occupancy is issued.

**Taxable Transitional Assessed Value** – the value in the base year preceding the first year that the benefits under D.C. Official Code § 47-811.03 commence, excluding any supplemental assessments assessed in that year. It should be noted that the assessed value may change in a half-year levy that precedes the first year of the abatement under D.C. Official Code § 47-811.3 in the event that the timing of the increase in the value of the building or renovations is picked up in the Taxable Transitional Year.

**Taxable year** - the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed pursuant to D.C. Official Code § 47-1800. “Taxable year” means, in the case of a return made for a fractional part of a year pursuant to D.C. Official Code § 47-1800 or under the regulations prescribed by the Mayor, the period for which such return is made.

**Tenant** - for real property tax abatement purposes, is a QHTC that executes a lease under which it occupies and uses eligible premises. The term tenant shall include a subtenant if the subtenant is a QHTC.